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PATENT APPLICATION
Docket No. 18424.1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Walter A. Zohmann

Serial No. 08/526,379

Patent No. 5,573,519

Filed: September 11, 1995

Confirmation No.: 9482

For: ATRAUMATIC NEEDLE FOR
LUMBAR PUNCTURE

Examiner: Jackson, Gary

Customer No.: 22913

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OFFICE OF PETITIONS

TRANSMITTAL FOR PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT
OF MAINTENANCE FEE IN AN EXPIRED PATENTMail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent under 37 CFR § 1.378(b) for the above-identified patent.

A. Enclosed

X Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent.

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May 21, 2010
Page 2

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- ☒ Credit Card Payment Form.
- ☒ Statement Regarding Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent Under 37 CFR § 1.378(b).
- ☒ Declaration of Walter A. Zohmann in Support of Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent Under 37 CFR § 1.378(b).
- ☒ Declaration of Peter Berger in Support of Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent Under 37 CFR § 1.378(b).

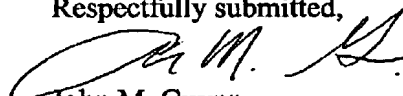
B. Payments

- ☒ Payment using the Credit Card payment Form will be used to cover the following fees:
 - ☒ the \$1240.00 fee for the Maintenance Fee due at 7.5 years;
 - ☒ the \$2055.00 fee for the Maintenance Fee due at 11.5 years; and
 - ☒ the \$700.00 fee for the surcharge fee required by 37 CFR 1.20(i)(1) for accepting unavoidably delayed payment of the maintenance fee.
- ☐ PTO 2038 Credit Card form in the amount of \$3995.00 is enclosed to cover the additional claim fee.
- ☒ The Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 23-3178.

Please address all future correspondence in connection with the above-identified patent application to the attention of the undersigned.

Dated this 21st day of May, 2010.

Respectfully submitted,


John M. Gynn
Registration No. 36,153
Attorney for Applicant
Customer No. 22913

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PTO/SB/65 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))Docket Number (Optional)
18424.1Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450
Fax: (571) 273-8300

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NOTE: If information or assistance is needed in completing this form, please contact Petitions Information **OFFICE OF PETITIONS**
(571) 272-3282.Patent Number: 5,573,519Application Number: 08/526,379Issue Date: November 12, 1996Filing Date: September 11, 1995

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable:

The above-identified patent:

☐ is a reissue of original Patent No. _____ original issue date _____;
original application number _____
original filing date _____

☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application
_____ filed on _____

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.May 21, 2010
Date
SignatureJohn M. Boyan
Typed or printed name of person signing Certificate

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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1. SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 ½ yr fee	(1551)	<input type="checkbox"/> \$ _____	3 ½ yr fee	(2551)
<input type="checkbox"/> \$ _____	7 ½ yr fee	(1552)	<input checked="" type="checkbox"/> \$ 1,240.00	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input checked="" type="checkbox"/> \$ 2,055.00	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ 3295.00

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700.00 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.

SURCHARGE FEE BEING SUBMITTED \$ 700.00

5. MANNER OF PAYMENT

- ☐ Enclosed is a check for the sum of \$ _____
- ☐ Please charge Deposit Account No. _____ the sum of \$ _____
- ☒ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

- ☒ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. 23-3178

PTO/SB/65 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

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7. OVERPAYMENT

As to any overpayment made, please

☒ Credit to Deposit Account No. 23-3178

OR

☐ Send refund check


WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.



Signature(s) of Petitioner(s)
John M. Guynn

Typed or printed name(s)
60 East South Temple, Suite 1000

Address
Salt Lake City, Utah 84111

Address

May 21, 2010

Date
36, 153

Registration Number, if applicable
801-533-9800

Telephone Number

ENCLOSURES:

- ☒ Maintenance Fee Payment
☒ Statement why maintenance fee was not paid timely
☒ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)
☒ Other: Supporting Declarations of Peter L. Berger (and exhibit A) and Walter A. Zohmann

PTO/SB/65 (03-09)

Approved for use through 03/31/2012. OMB 0651-0018

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."



Signature

John M. Guynn

Type or printed name

May 21, 2010

Date

36,153

Registration Number, if applicableSTATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

Please see the attached declarations and supporting documentation.

(Please attach additional sheets if additional space is needed)

[Page 4 of 4]

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Petitioner: Walter A. Zohmann

Patent No.: 5,573,519

Issued: November 12, 1996

Application No.: 08/526,379

Filing Date: September 11, 1995

For: ATRAUMATIC NEEDLE FOR LUMBAR PUNCTURE

Confirmation No.:

Customer No.:

Attorney Docket: 18424.1

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Attention: Office of Petitions

**STATEMENT REGARDING PETITION TO ACCEPT
UNAVOIDABLY DELAYED PAYMENT OF MAINTENANCE
FEE IN AN EXPIRED PATENT UNDER 37 C.F.R. §1.378(b)**

Dear Sir:

Walter A. Zohmann ("Petitioner"), the owner of U.S. Patent No. 5,573,519 ("the '519 Patent"), hereby petitions the Commissioner under 37 C.F.R. § 1.378 to accept his unavoidably delayed late payment of maintenance fees for the '519 Patent.

Petitioner took reasonable care to ensure that the maintenance fees for the '519 Patent would be timely paid. Despite this and although the first maintenance fee was paid, the second and third maintenance fees for the '519 Patent were not paid. When Petitioner realized that the

'519 Patent had expired due to a failure to pay maintenance fees, he acted promptly to file this petition.

A. Steps Petitioner Took To Ensure Timely Payment Of Maintenance Fees For The '519 Patent

Petitioner retained the services of registered patent attorney Peter L. Berger to prepare and prosecute the application which matured into the '519 Patent. *See* Declaration of Walter A. Zohmann ("Zohmann Decl.") at ¶2. The '519 Patent issued on November 12, 1996. Because the '519 Patent was among the first patent applications sought by Petitioner, Petitioner had extremely limited familiarity with Patent Office rules and procedure. (Zohmann Decl. at ¶3.) As such, Petitioner relied extensively on Attorney Berger, delegating to him responsibility for all issues relating to the application that became the '519 Patent. (Zohmann Decl. at ¶4.)

On or about June 23, 2000, Attorney Berger sent Petitioner a letter regarding the deadline for payment of the first maintenance fee for the '519 Patent. (*See* Declaration of Peter L. Berger ("Berger Decl.") at ¶3; *see also* Exh. A to Berger Decl.; Zohmann Decl. at ¶4.) In that letter, Attorney Berger advised Petitioner that the fourth-year maintenance fee was due on November 12, 2000, and that the amount involved was \$770 plus a \$65 surcharge. (Exh. A to Berger Decl.) Significantly, the letter also stated:

Please let us know, at your earliest convenience, whether you wish us to pay this fee. Alternatively, if you wish to allow the patent to lapse, please let us know and we will remove the case from our records.

(*Id.*)

Upon receipt of this letter, Petitioner instructed Attorney Berger to pay the first maintenance fee for the '519 Patent. (Zohmann Decl. at ¶7.) The June 23, 2000 letter was the only reminder that Petitioner received regarding payment of the first maintenance fee for the '519 Patent. (Zohmann Decl. at ¶8.) In accordance with Petitioner's request, on June 27, 2000, Attorney Berger caused the first maintenance fee for the '519 Patent to be paid. (Berger Decl. at ¶4.)

Petitioner continued thereafter to rely on Attorney Berger to notify Petitioner of any and all requirements to maintain his rights in the '519 Patent. (Zohmann Decl. at ¶9.) Indeed, the fact that Attorney Berger had notified Petitioner and arranged for the payment of the first maintenance fee further ratified Petitioner's understanding that he would be notified of subsequent deadlines for the payment of any additional maintenance fees, consistent with the prior delegation of all legal matters with respect to the '519 Patent to Attorney Berger. (Zohmann Decl. at ¶10.)

In 2004 and 2008, when the second and third maintenance fees became due, Petitioner did not receive any notification from Attorney Berger regarding the need to pay more maintenance fees. (Zohmann Decl. at ¶11.) Petitioner was not aware that another maintenance fee was due in 2004 and again in 2008. (Zohmann Decl. at ¶12.) Consequently, because Petitioner did not receive any notification from Attorney Berger of the need to pay these maintenance fees, he did not provide any instructions to Attorney Berger to pay them. (Zohmann Decl. at ¶13.)

The electronic docketing system used at Attorney Berger's law firm includes an entry dated May 7, 2004, which states: "Case to go abandoned per PLB." (Berger Decl. at ¶5.) While it was Attorney Berger's practice to only enter such a notation only when he had received verbal or written instructions from the client that the patent should be allowed to go abandoned, Attorney Berger has no specific recollection or record of having received any verbal instructions from Petitioner specifically stating that Petitioner's '519 patent should be allowed to go abandoned. (Berger Decl. at ¶5, 7.) Further, Attorney Berger has no recollection of sending Petitioner any communication regarding the need to pay the second or third maintenance fee, nor do his records reflect that any such correspondence was sent to Petitioner. (Berger Decl. at ¶6.) The only remaining record that Attorney Berger could locate on this matter is an electronic copy of the reminder letter that was sent to Petitioner in connection with the first maintenance fee on June 23, 2000. (Berger Decl. at ¶8.) Attorney Berger's hard copy files relating to the '519

patent for the case were destroyed in 2007 in connection with an office move. (Berger Decl. at ¶9.)

At no time did Petitioner communicate to Attorney Berger that Petitioner wanted to allow the '519 Patent to lapse or that Petitioner wanted Attorney Berger to remove the case from Attorney Berger's records. (Zohmann Decl. at ¶14.) At no time after engaging the services of Attorney Berger did Petitioner dismiss Attorney Berger or instruct him to cease acting in his capacity as Petitioner's patent attorney. (Zohmann Decl. at ¶15.) At no time did Petitioner instruct Attorney Berger or his law firm to destroy Petitioner's files relating to the '519 Patent. (Zohmann Decl. at ¶16.)

B. Steps Petitioner Took After Realizing That The '519 Patent Had Expired Due To A Failure To Pay Maintenance Fees

In about December of 2009, Petitioner entered into discussions with a third party relating to the possibility of selling certain assets to that third party. (Zohmann Decl. at ¶17.) Among the assets under consideration were some of Petitioner's patents, including the '519 Patent. (*Id.*) In the course of that third-party's due diligence in investigating the assets, including the '519 Patent, the third party learned that the '519 Patent had expired for failure to pay maintenance fees. (Zohmann Decl. at ¶18.) That information was communicated by the third party to Petitioner in late December of 2009.

Shortly thereafter, Petitioner engaged the services of the undersigned law firm and began investigating the possibility of taking action to revive the '519 Patent. (Zohmann Decl. at ¶19.) This petition is the direct result of that investigation. (*Id.*)

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to **Deposit Account No. 23-3178**: (1) any filing fees required under 37 CFR § 1.16; (2) any patent application and reexamination processing fees under 37 CFR § 1.17; and/or (3) any post issuance fees under 37 CFR § 1.20. In addition, if any additional extension of time is required, which has not otherwise

been requested, please consider this a petition therefore and charge any additional fees that may be required to **Deposit Account No. 23-3178**.

Dated this 21st day of May 2010.

Respectfully submitted,



JOHN M. GYNN
Registration No. 36,153
WORKMAN NYDEGGER
Attorney for Patentee
Customer No. 022913

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Petitioner: Walter A. Zohmann
Patent No.: 5,573,519
Issued: November 12, 1996
Application No.: 08/526,379
Filing Date: September 11, 1995
For: ATRAUMATIC NEEDLE FOR LUMBAR PUNCTURE
Attorney Docket: 18424.1

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Alexandria, VA 22313-1450
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**DECLARATION OF WALTER A. ZOHMANN IN SUPPORT OF
PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF
MAINTENANCE FEE IN AN EXPIRED PATENT UNDER 37 C.F.R. §1.378(b)**

I, Walter A. Zohmann, declare as follows:

1. I am a resident of the United States, am over the age of 21, and am competent to testify to the matters set forth herein.
2. I retained the services of registered patent attorney Peter L. Berger to prepare and prosecute the application which matured into U.S. Patent No. 5,573,519 ("the '519 Patent").
3. The '519 Patent matured from one of the first patent applications that I had prepared; for this reason I had extremely limited familiarity with Patent Office rules and procedure.
4. I relied extensively on Mr. Berger and delegated to him responsibility for the application that became the '519 patent.

5. On or about June 23, 2000, Mr. Berger sent me a letter regarding the deadline for payment of the first maintenance fee for the '519 Patent which, to the best of my recollection, contained the text found in Exhibit A to the Declaration of Peter Berger.

6. As noted in Exhibit A to the Declaration of Peter Berger, Mr. Berger advised me that the fourth-year maintenance fee was due on November 12, 2000, and that the amount involved was \$770 plus a \$65 surcharge.

7. Upon receipt of this letter, I instructed Mr. Berger to pay the maintenance fee.

8. The June 23, 2000 letter was the only reminder that I received regarding payment of the first maintenance fee for the '519 Patent.

9. I continued to rely on Mr. Berger after payment of this maintenance fee to notify me of any and all requirements to maintain my rights in the '519 Patent.

10. The fact that Mr. Berger had notified me and arranged for the payment of the first maintenance fee further ratified my understanding that I would be notified of subsequent deadlines for the payment of any additional maintenance fees.

11. In 2004 and 2008, when the second and third maintenance fees became due, I did not receive any notification from Mr. Berger regarding the need to pay more maintenance fees.

12. I was not aware that another maintenance fee was due in 2004 and again in 2008.

13. Because I did not receive any notification from Mr. Berger of the need to pay these maintenance fees, I did not provide any instructions to Mr. Berger to pay them.

14. At no time did I communicate to Mr. Berger that I wanted to allow the '519 Patent to lapse or that I wanted Mr. Berger to remove the case from his records.

15. At no time after engaging the services of Mr. Berger did I dismiss Mr. Berger or instruct him to cease acting in his capacity as my patent attorney for the '519 Patent.

16. At no time did I instruct Mr. Berger or his law firm to destroy the files relating to the '519 Patent.

17. In about December of 2009, I entered into discussions with a third party relating to the possibility of selling certain assets to that third party. Among the assets under consideration were some of my patents, including the '519 Patent.


18. In the course of that third-party's investigation of the assets, including the '519 Patent, that third party learned that the '519 Patent had expired for failure to pay maintenance fees. That information was passed on to me by that third party.

19. Shortly after becoming aware that the '519 Patent had expired, I engaged the services of Workman Nydegger and began investigating the possibility of taking action to revive the '519 Patent. This petition is the direct result of that investigation.

20. This declaration is submitted based upon my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge.

Executed this 15 day of May, 2010 in Humboldt, Utah.


Walter A. Zohmann

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Petitioner: Walter A. Zohmann
Patent No.: 5,573,519
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Attorney Docket: 18424 1

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**DECLARATION OF PETER BERGER IN SUPPORT OF PETITION
TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF MAINTENANCE
FEE IN AN EXPIRED PATENT UNDER 37 C.F.R. §1.378(b)**

I, Peter L. Berger, declare as follows:

1. I am a citizen of the United States, am over the age of 21, and am competent to testify to the matters set forth herein
2. I prosecuted U S Patent No. 5,573,519 ("the '519 Patent") on behalf of Walter A. Zohmann
3. On or about June 23, 2000, I sent Walter Zohmann a letter regarding the deadline for payment of the first maintenance fee for the '519 Patent. A true and correct copy of a printout of the computer file used to create this letter is attached as Exhibit A.
4. In accordance with Mr. Zohmann's instructions, I caused the first maintenance fee for the '519 Patent to be paid on June 27, 2000.

5. My firm's electronic docketing system includes an entry dated May 7, 2004 which states: "Case to go abandoned per PLB." It was my practice at that time to enter such a notation into the docket—expressing my instructions to allow the patent to go abandoned—only when I had received verbal or written instructions from the client that the patent should be allowed to go abandoned

6. I have no recollection of sending Walter Zohmann any communication regarding the second or third maintenance fees, nor do my records reflect that any such correspondence was sent to Mr. Zohmann.

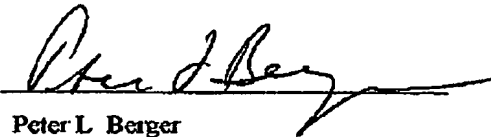
7. While I had several discussions with Mr. Zohmann concerning snow skiing and his move to Utah, I have no specific recollection or record of receiving any verbal instructions from Mr. Zohmann specifically stating that his '519 patent should be allowed to go abandoned, except as set forth in paragraph 5

8. The only other record I still possess on this matter is an electronic copy of the June 23, 2000 reminder letter I sent to Mr. Zohmann in connection with the payment of the first maintenance fee

9. The hard-copy files relating to the '519 patent were destroyed in 2007 in connection with an office move

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the patent.

Executed this 17 day of May, 2010 in New York, New York



Peter L. Berger

EXHIBIT A

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OFFICE OF PETITIONS

June 23, 2000

Mr. Walter Zohmann
IMD Inc.
P.O. Box 681180
528 Park Avenue
Park City, Utah 84068-1180

Re: US. Patent No. 5,573,519
For: ATRAUMATIC NEEDLE FOR LUMBAR PUNCTURE
Our File No. 1234.001

Dear Walter:

We wish to advise that the final deadline for payment of the 4th year maintenance fee is November 12, 2000. At present, the amount involved is \$770.00. plus a \$65. surcharge. This is the first maintenance fee in connection with this patent.

Please let us know, at your earliest convenience, whether you wish us to pay this fee. Alternatively, if you wish to allow the patent to lapse, please let us know and we will remove the case from our records.

Thank you for your cooperation.

Very truly yours,

LEVISOHN, LERNER, BERGER & LANGSAM

Peter L. Berger

PLB/jq

j:\C:\Documents and Settings\workman\My Documents\1234-001.mxd